

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Olli-Pekka Pohjola et al.
Title: SECURE UPSTREAM
TRANSMISSION IN PASSIVE
OPTICAL NETWORKS
Appl. No.: 10/717,601
Filing Date: 11/21/2003
Patent No.: 7,593,638
Grant Date: 9/22/2009
Examiner: Hanh Phan
Art Unit: 2613
Confirmation Number: 8207

**RENEWED REQUEST FOR RECONSIDERATION OF PATENT TERM
ADJUSTMENT UNDER 37 C.F.R. §1.705**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully renew their request for reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent which issued on 9/22/2009 as U.S. Patent No. 7,593,638. The USPTO indicated in the letter mailed August 6, 2009 (copy attached as Exhibit A), that a decision on the Applicants' initial request was dismissed as premature.

The Patent Office determined that the patent was entitled to 604 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 C.F.R. 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-

year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1103 days PTA, as shown on the attached sheet (Exhibit B), which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1193 days
(b) Total Applicant delay:	90 days
Final PTA Determination:	1103 days

Applicants therefore respectfully request that the patent be accorded 1103 days PTA.

The patent is not subject to a terminal disclaimer.

Because this is a renewed request, Applicants do not believe that any fee is due, the fee having been paid with the Applicants' original request on March 10, 2009. However, if a fee is due, and should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Applicants request further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

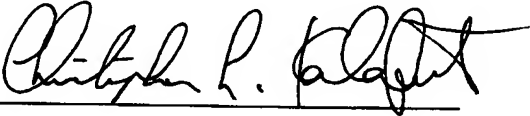
Date November 19, 2009

FOLEY & LARDNER LLP

Customer Number: 26371

Telephone: (608) 258-4286

Facsimile: (608) 258-4258

By 

Christopher L. Kalafut
Attorney for Applicant
Registration No. 57,946